



Patricia M. French
Senior Attorney
Legal Department

November 9, 2004

BY E-FILE AND OVERNIGHT DELIVERY
Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 04-01: Investigation Regarding the Assignment of Interstate Pipeline Capacity

Dear Ms. Cottrell:

Enclosed for filing please find an original and nine (9) copies of Bay State Gas Company's Amended Motion for Protective Treatment.

Please do not hesitate to telephone me with any questions whatsoever.

Very truly yours,

Patricia M. French

cc: Caroline O'Brien, Esq., Hearing Officer, DTE
Service List

CERTIFICATION

I, Susan Kullberg, hereby certify that I have caused a copy of the within to be served on each of the individuals on the service list for D.T.E. 04-01 on file with the Secretary of the Department of Telecommunications and Energy.

Dated at Westborough, Massachusetts, this 9th day of November, 2004.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

_____)
INVESTIGATION INTO ASSIGNMENT)
INTERSTATE PIPELINE CAPACITY)
_____)

D.T.E. 04-1

**AMENDED MOTION
OF BAY STATE GAS COMPANY
FOR PROTECTIVE TREATMENT**

NOW COMES Bay State Gas Company (“Bay State”) and respectfully requests that the Department of Telecommunications and Energy (“the Department”) grant it protection from public disclosure over certain confidential, competitively sensitive and proprietary information submitted in this proceeding and in accordance with G.L. c. 25, sec. 5D. On June 9, 2004, Bay State submitted a motion for protective treatment over the materials described herein. Bay State now seeks to update its motion to indicate whether a sunset is appropriate for the protection sought and to provide its certification that the information sought protected is not available in the public domain (“Amended Motion”).

Accordingly, in support of its Amended Motion, Bay State states:

1. On January 2, 2004, the Department opened this investigation into whether upstream capacity markets were sufficiently competitive to warrant the Department allowing the voluntary assignment of interstate pipeline capacity rights by gas companies under the Department’s jurisdiction to other entities.
2. On March 1, 2004 and March 29, 2004, Bay State filed its initial comments and its reply comments in to the questions raised by the Department’s inquiry.

3. On May 26, 2004, the Department issued its first set of information requests of the gas companies and marketers participating in the proceeding. As part of the requests made by the Department of local distribution companies (“LDC’s”) in the proceeding, the Department asked for, inter alia, the pricing terms for all current gas supply and storage contracts (DTE-1-LDC-1(d)) and the pricing terms for all asset/portfolio management contracts (DTE-1-LDC-3(c)).¹

4. Bay State’s responses to DTE-1-LDC-1(d) and DTE-1-LDC-3(c) necessarily include confidential and competitively sensitive natural gas commodity and demand pricing information. Bay State uses the commodity and demand costs of gas supplies procured in the competitive market to evaluate its alternatives, to negotiate, and to bargain with competing entities for a best-cost portfolio of supply, storage and asset/management contracts. This pricing information constitutes confidential and competitively sensitive business information. Therefore, Bay State seeks protection for DTE-1-LDC-1(d) and DTE-1-LDC-3(c) consistent with the protection commonly granted to semi-annual cost of gas adjustment filings. Protection for this information is appropriate pursuant to Chapter 25, section 5D of the General Laws of Massachusetts.

5. G.L. c. 25, sec. 5D is specifically designed to protect against disclosure of competitively sensitive information. That provision, in part, provides

[T]he [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted

¹ The Department also sought the pricing terms for all current transportation contracts. DTE-1-LDC-2(c). Bay State does not seek protection over its response to DTE-1-LDC-2(c) because the pricing terms of the transportation contracts it holds are at maximum tariff rates under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) and are publicly available.

pursuant to this chapter. There shall be a presumption that the information for which protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, sec. 5D. In determining the existence and extent of such need, the Department must consider the presumption in favor of disclosure and the specific reasons why disclosure of the disputed information benefits the public interest. Berkshire Gas Co., D.P.U. 93-187/188/189/190 at 16 (1994). The utility must show need by a specific factual demonstration and with respect to price terms, must show the manner in which the price term is competitively sensitive. Id.

6. The Department has previously granted protective orders over pricing information in order to avoid informing the market of LDC pricing strategy and results from negotiations, which if divulged, could weaken a utility's bargaining position and potentially increase the cost of procuring supplies for Bay State and its customers. See, e.g. Colonial Gas Co., D.P.U. 96-18 at 4 (1996) (protected pricing terms in gas supply contract, including all reservation fees and demand charges, commodity charges and other pricing information).

7. Disclosure of Bay State's confidential pricing information relative to current gas supply, storage contracts and asset/portfolio management contracts may jeopardize Bay State's current and future attempts to obtain the lowest pricing for its gas supplies, storage contracts and asset/portfolio management contracts. This confidential, commercially sensitive and proprietary information is the type of information the

Department may protect from public disclosure pursuant to G.L. c. 25, sec. 5D and is the type of information that the Department has previously recognized is appropriate for protection.

8. The information over which Bay State seeks protection is relative to the competitively negotiated prices of natural gas or upstream supply contracts; such contracts and pricing information are not available publicly, anywhere or at any time.

9. Bay State asks that the protection over this material continue for 5 years past the last day of the year of their expiration, with Bay State granted the right to seek perpetuation of the Department's protection at the end of the 5th year. In particular, Bay State will be seeking renewal or replacement supply at the same or similar locations. Making the pricing terms of these upstream negotiated natural gas supply contracts public would compromise Bay State's ability to control the RFP process (as the limited number of participants would know both the most recent pricing and the competitor offering that price) and would inhibit Bay State's ability to make suppliers compete to provide the lowest reasonably priced replacement or renewal supply. Public availability of existing supply prices would impede Bay State's ability to favorably negotiate new terms to the benefit of its customers.

WHEREFORE, Bay State Gas Company respectfully requests that the Department of Telecommunications and Energy grant its Motion for Protective Treatment as stated herein, and protect from public disclosure the contents of the attachments responding to DTE-1-LDC-1(d) and DTE-1-LDC-3(c) that contain

confidential pricing information relative to Bay State Gas Company's current gas supply,
storage contracts and asset/portfolio management contracts.

Respectfully submitted,

BAY STATE GAS COMPANY

By its attorney,

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DATED: November 9, 2004